EXHIBIT 5

Condensed Transcript

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

IAN J. BROWN, JAMES BROWN and BARBARA BROWN,

Plaintiffs,

VS

CIVIL ACTION NUMBER: 04-11924-RGS

UNITED STATES OF AMERICA, VERIZON NEW ENGLAND, INC. and BOSTON EDISON COMPANY d/b/a NSTAR ELECTRIC,

Defendants.

DEPOSITION OF

TRACEY COOK

August 15, 2006 10:06 a.m.

Manheimer & Charnas 210 Commercial Street Boston, Massachusetts

Lauren Sullivan, Notary Public, Professional Shorthand Reporter, within and for the Commonwealth of Massachusetts.



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August 15, 2006

	9		11
1	course of your employment with the Bedford	1.	involving taking measurements and taking
2	Police Department?	2	photographs since you've been a police
3	A. In the academy.	3	officer with the Bedford Police Department?
4	Q. The police academy?	4	A. I was never in the position of a
5	A. Yes.	5	reconstructionist.
6	Q. When was that, approximately?	6	Q. So is it fair to say you've never
7	A. I would say within the three months	7	done an accident reconstruction?
8	of the academy training.	8	A. Yes. As far as in the
9	Q. Did you go to the academy	9	reconstruction position itself, yes.
10	immediately upon starting employment as a	10	Q. Is there someone at the Bedford
11	police officer?	11	Police Department who, as part of his or
12	A. Yes.	12	her job, performs accident reconstructions
13	Q. And did the academy last three	13	for the police?
14	months, approximately?	14	A. Yes.
15	A, Fifteen weeks.	15	Q. And who was that person in January
16	Q. And is it your testimony that for	16	of 2002?
17	some portion of those 15 weeks, your time	17	A. I don't believe we had one at that
18	was devoted to studying accident	18	time.
19	reconstruction?	19	Q. Who is the person currently who
	A. Very limited time.	20	does that?
20	Q. Can you describe in any respect the	21	A. Marc Saucier.
21		22	Q. How do you spell his last name?
22	amount of time you spent, either hours,	23	A. S-A-U-C-I-E-R, M-A-R-C.
23	weeks, days, in the study of accident	24	Q. Was Officer Saucier with the
24	reconstruction when you were at the		12
	10		
1	academy?	1	Bedford Police Department in January of
2	 A. I want to say probably three hours 	2	2002?
3	or less.	3	A. Yes.
4	Q. Were you provided any written	4	Q. Officer Cook, let me show you a
5	materials in regard to your study of	5	document which consists of three pages,
6	accident reconstruction at the police	6	and the first page of which at the top
7	academy?	7	says "Commonwealth of Massachusetts Motor
8	A. I can't recall.	8	Vehicle Crash Police Report." Take a
9	 Q. Have you had any education or 	9	moment and look over that document. I'm
10	training in the field of accident	10	going to ask you some questions about it.
11	reconstruction other than that period of	11	A. (Witness viewing document).
12	time you spent when you were at the police	12	 Q. Have you had a chance to look at
13	academy?	13	it?
14	A. No.	14	A. Yes.
15	Q. Generally speaking, can you tell us	15	Q. Generally speaking, do you
16	what you learned in regard to accident	16	recognize what that document is?
1	reconstruction at the police academy?	17	A. Yes.
17		18	Q. Tell us what it is, please.
	 A. Basically, when you get to the 	1	
18		19	A. It's a crash report.
	scene, you know, once you deal with the		 Q. Is it a crash report regarding an
18 19 20	scene, you know, once you deal with the injured, and take measurements, and that's	19	 Q. Is it a crash report regarding an incident which occurred on January 4th,
18 19	scene, you know, once you deal with the injured, and take measurements, and that's about basically it, and photographs of	19 20	 Q. Is it a crash report regarding an
18 19 20 21	scene, you know, once you deal with the injured, and take measurements, and that's	19 20 21	 Q. Is it a crash report regarding an incident which occurred on January 4th,



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	13		15
1	MR. CHARNAS: May we have	1	blank page. Yes.
2	that marked as Exhibit 1, please?	2	Q. Oh, I see. So there was this
3	(Exhibit-1, Commonwealth of	3	the same page as the second page of this
4	Massachusetts Motor Vehicle Crash Police	4	exhibit was reviewed by you, but that page
5	Report, marked for identification).	5	was blank when you reviewed it?
6	BY MR. CHARNAS:	6	A. Yes.
7	Q. By the way, Officer, you are here	7	Q. Do you have any independent memory
8	pursuant to a subpoena, correct?	8	of the incident which is the subject of
9	A. Yes.	9	this police report, Exhibit 1?
10	 Q. In preparation for this deposition, 	10	A. Yes.
11	did you review any documents?	11	Q. Okay. Do you remember
12	A. I looked over the accident form in	12	approximately what time of day the
13	your hand, our copy.	13	incident occurred?
14	Q. Exhibit 1? This Exhibit 1?	14	A. No.
15	A. No. Yes.	15	Q. Do you remember if it was in the
16	Q. Okay.	16	morning or the afternoon?
17	A. But it's a different	17	A. Not without reviewing my notes.
18	Q. Another copy of it?	18	Q. Do you have notes with you?
19	A. It's It's not It's It is	19	A. Just the form in front of you.
20	that It is that item, minus a few	20	Q. Okay.
21	things, though. It didn't have the	21	A. Minus the diagram.
22	diagram on it.	22	Q. All right. So you have no notes
23	Q. Oh, I see. Okay.	23	which contain information independent or
24	A. Because that's in the records.	24	different from what's in Exhibit 1; is
	14		16
1	Q. So you looked at some, but not all	1	that correct?
2	of Exhibit 1; is that correct?	2	A. That's correct.
3	A. Yes.	3	Q. Do you remember where you were when
4	Q. And the part that you recall not	4	this incident occurred?
5	looking at in preparation for this	5	A. Yes.
6	deposition was at least the part that	6	Q. Tell us where you were.
7	contained the diagram on the second page?	7	A. I was at South Road at I
8	A. Yes.	₿	believe it was Deborah Ann's Bakery by the
9	Q. Are there any other parts Strike	9	railroad depot monitoring traffic, which is
10	that.	10	at South and Loomis.
11	Did you not review the entire	11	Q. South Road and Loomis Street?
12	second page in preparation for this	12	A. Yes.
13	deposition?	13	 Q. Were you actually on South Road at
14	A. No.	14	that time?
15	MR. CALLAHAN: I'm sorry.	15	A. I was in the parking lot of the
16	What did you	16	bakery or the depot.
17	BY MR. CHARNAS:	17	Q. Would you say you were directing
18	Q. That's probably a poor question.	18	traffic at that time?
19 20	Let me ask it a different way. Too many	19	A. Monitoring traffic.
21	negatives.	20	Q. When you say "monitoring traffic,"
22	Did you review any of the second	21	what do you mean?
23	page of Exhibit 1 in preparation for this	22	A. Meaning that you are positioned
24	deposition? A. That What was on that page, the	23 24	where the public can see you and you're monitoring the driving abilities of – and
. / 4		./4	monucound the driving shiftles of _ and



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	00		31
	29		,
1	Q. And then you take over and fill it	1	to refer to Exhibit 1, just let us know,
2	out?	2	and feel free to do so.
3	A. Yes.	3	Now, you said you came upon the
4	Q. Now, the third page - Well, strike	4	scene, you saw the motorcycle, as you
5	that.	5	described, and you saw someone lying in
б	On the second page of this report,	6	the road, as you've told us.
7	Exhibit 1, is a diagram. I think you	7	Did you observe anything else
lé	already told us you drew that diagram,	8	before you brought your patrol car to a
9	correct?	9	stop, that you recall?
	A. Yes.	10	A. No.
10	Q. Did you draw that diagram in the	11	Q. Did you observe anyone in the
11	Q. Did you draw that diagram in the	12	vicinity, that is, within 50 feet of where
12	course of filling out the report at the	13	the person was lying in the road before
13	station, or did you draw it at the scene	14	you brought the patrol car to a stop?
14	or some other time?	L .	A. No.
15	A. I can't recall what exact time.	15	Q. Did your patrol car have a video
16	Q. On the third page of this report,	16	Q. Did your paron car nave a video
17	it says "Addendum" at the top left. Do	17	camera of some type in it at the time
18	you see that?	18	that you came upon the scene?
19	A. Mm-hmm.	19	A. Yes.
20	Q. Yes?	20	Q. Was that video camera designed to
21	 A. Yes. That's what it says. 	21	operate automatically under certain
22	Q. Did you prepare that addendum as	22	circumstances?
23	well?	23	A. Yes.
24	A. That would be the the the	24	Q. Was it operating at the time of
		1	
	30	1	32
	30		
1	narrative. That's Yes. I prepared the	1	this incident?
2	narrative. That's Yes. I prepared the narrative.	2	this incident? A. To the best of my knowledge.
2 3	narrative. That's Yes. I prepared the narrative. Q. Did you prepare that addendum	2 3	this incident? A. To the best of my knowledge. Q. Did you ever – Well, strike that.
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\ _		EXAMINATION	1	like a it's almost like a a main	
]		BY-MR.CALLAHAN:	2	form that we fill out, and that would	
	2	Q. Officer Cook, my name is Michael	3	coincide with that.	
	3	Callahan. I represent Boston Edison	4	Q. And some have the numbers 1 in the	
	4	Callanan. I represent boston cover the same	5	center of them like and on the	
	5	Company, so I'll try not to cover the same	6	right-hand side, there's one says 7,	
1	6	ground that Scott did, but I do have some	7	and below that says 24. Do you have any	
'	7	questions that I wanted to ask you.	8	knowledge as to what those different	
1	8	First, if you could take a look at	9	numerical designations mean?	ı
	9	Exhibit 1, which is your motor vehicle	10	A Again, it all has to do with -	i
1	. 0	police or police report.	11	with you know, checking off certain	
1	1	A. (Witness viewing document).	12	things of what, you know, caused the	ĺ
. 1	.2	Q. On the first page, I noticed that	13	crash or events of the crash.	
1	13	there are what appear to be kind of tabs	14	Q. Okay.	l
1	L 4	on the left-hand side and the right-hand	15	A. It's almost like you need a	
1	15	side.	16	MasterCard to to figure this out.	
2	16	A. Yes.	17	Q. If you look at your police report	
1:	17	Q. What are those tabs?	18	at the top, it says just below the	l
1:	18	A. When you start a police report,	19	words "Police Report," it says "Location".	l
	19	there are a number of questions that the		Do you see that? It's in -	
	20	officer has to answer. One is direction	20	A. (Witness viewing document). Yes.	١
	21	of travel or weather, and it's things like	21	Q. All right.	1
	22	that So those these tabs all	22	A. Yes.	l
	23	represent a certain either question, you	23	Q. And then just below that and to the	
- 4	24	know, one, or, you know, what was the	24	The state of the s	٦
ľ		90		92	١
		the road conditions and	lı	right, it says "Location, 180 Hartwell	1
1	1	object or how was the road conditions and	2	Road"?	١
	2	so forth. That's Instead of putting them down somewhere, these numbers all	l l	A. Yes.	١
ł	3	them down somewhere, these numbers and	4	 Q. Is that the information you put 	1
-	4	represent certain	5	into this report?	İ
	5	Q. So when you're sitting at the	6	A. No.	1
1	6	computer filling out the report, are you	1 7	 O. How did that piece of information 	1
-	7	then are you basically filling out	8	get into this report, if you know?	1
	8	different fields	وا	A. Probably from dispatch. Because	1
	9	A. Yes.	10	someone will call, they'll call, and	1
	10	Q that contain data, and then once	11	they'll give a - a landmark.	١
	11	- once you complete those fields, then	12	O. Okav.	
	12	that information is inputted on to the	13	A. I don't even know where 180	
	13	report itself?	14	Hartwell is.	
	14	A. What you see, yes.	15	 And below that it says and to 	
	15	Q. Okay. Now, like for example, the	16	the report, it says, "74 feet east of pole	
	16	tab on the top left is a it's a	17	number 37." Do you see that?	
	17	square, and there's a number one on the	18	A. Yes.	
	18	top left-hand corner, and then there's a	119	 Q. Is that information that you 	
	19	number 1 right in the center. What do	20	inputted to be put onto this report?	
	20	those two numbers	21	A I but that in. Yes.	
	21	A. 1	22	O Okay, And when - So when you	
	22	Q represent?	23	referenced 74 feet east of pole 37, who	at
	23	A don't know exactly which			
	24	Because you'd have to have it's almost			

August 15, 2006

	93		95
1	A. Okay. Where the 180 Hartwell Road	1	
2	would be. So the reference came in that	2	left of pole 37 A. East –
3	that address was 180, and I was just	3	Q on this diagram?
4	saying that 74 feet of 180 was where	4	A. Eastbound. Yes.
5	just as a reference.	5	Q. Okay. Now, below that there's
6	Q. Now, if you look at the second page	6	information that indicates the license
1 7	of your diagram I'm sorry, the second	7	number, age, date of birth, and then
В	page of the report where your diagram is.	8	operator lan Brown. Is that information
و ا	A. (Witness viewing document).	9	that you obtained and inputted into this
10	Q. And you see where you have in the	10	report?
111	diagram a reference to 74 feet from the	11	A. No.
12	skid to number 2?	12	Q. Who obtained that information and
13	A. Yes.	13	
14	Q. Okay. Does the 74 feet reference	14	how and if you know, how did it get
15	on the first page of your report does	15	onto this report?
16	that have any relation to the 74 feet that	16	A. Most likely from the — Well, we
17	you measured and which is indicated on the	17	call in the plate, and the vehicle
18	diagram on Page .2, or are we talking	18	plate, and dispatch enters it in from
19	about two separate things?	19	there.
20	A. I think that was just a —	20	Q. Okay. So if you call in the
21	Q. Or do do you recall?	21	license plate number of the motorcycle,
22	A. I can't recall. I can't recall.	22	they're somehow able to pull up that
23	Q. 70 – 74 – I'm sorry. If you	23	information, and they can input that into
24	look at the first page I'm sorry. If	24	this report? A. Yes
	94	27	A. 165.
1	you look at your diagram.	,	
2	A. (Witness viewing document).	1 2	Q. How would they know that the
3	Q. 74 feet east of pole 37 would be	3	operator was lan J. Brown and it wasn't
4	to the left of the pole as you look at	4	someone else operating that motorcycle; do
5	this diagram; is that right?	5	you know?
6	A. Could you repeat that, please?	6	 A. We'd probably have to verify to the operator,
1 7	Q. Sure. My understanding is the	7	Q. And the license number, do you know
8	diagram that you drew indicates that the	8	how the information that's on the license
9	motorcycle that was involved in this	9	number would be obtained and ultimately
10	accident was driving eastbound on Hartwell	10	transferred to this report?
11	Road, correct?	11	A. Probably by an identification card.
12	A. Yes.	12	Q. Okay. Did you at any time look at
13	Q. So the point on this diagram which	13	the injured person's license to identify
14	would be 74 feet east of pole 37 would be	14	who he was and get his date of birth or
15	to the left of pole 37, more toward the	15	his license number?
16	area where the - you showed the	16	A. Not at the scene.
17	motorcycle laying in the road?	17	Q. Did you do it at any time
18	A. (Witness viewing document). I	18	subsequent
19	can't recall why that was	19	A. Yes.
20	Q. Okay.	20	Q to the accident?
21	A. I can't.	21	A. I believe. Yes.
22	Q. But you agree that 74 feet	22	Q. When did you do that?
23	A. Yes.	23	A. Probably back at the station.
24	Q east of pole 37 would be to the	24	Q. Okay. So what did you do



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<u>-</u>	-	Com	monwealth	of Massac	huse	ts						
,	Date of Crash Time of Crash	City/Town		hicle Cras		wet 1	Tumbe njured	- 147 - Lilla			taite Police	
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4 4	Operator BROWN, IAN J	AD: Apt#: 81		ddross								
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			V	chicle Action Prior to							Up to Three)	
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CDP1 11-24-00

Accident No. 2002000000065

Case 1:04-cv-11924-RGS

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Accident No: 20020000000055 Incident No: 2002000000055

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Commonwealth of Massachusetts Motor Vehicle Crash Police Report

Vulticles - Operator / 1	masmotorist / all occupants invi	ilved (cont.):										
Vehicle No. 1				· · · · · · · · · · · · · · · · · · ·	חנ	T 27 [- ps	207	714	21.1		
Name that Pirst Middle	Address	Involvement Type	App.DGB	Sex	1090 F(82	Symon Symon	Alexand Methods	Autur	280	525	inion Telifor	Medical Facility Beth Israel
BROWN, IAN J	103 SPIT BROOK ROAD . Act#: B1 NASHUA NH	Operator	03/22/77	M	1	5	5	99		-		Hospital

Narrative by Cook, Tracey

Seq. No:

Date & Time:

1/4/2002 4:39:00Ff

Upon arrival, the operator was lying supine with his legs facing east on Hartwell Road. The operator had no idea what happened but complaining of a lot of path in his chest area. The operator was air lifted to Beth Israel Hospital in Boston by Med Flight.

It appears that the rider skidded on the dirt shoulder on the right hand side. The distance from the start of the skid to where the operator was found on the street was 74 ft. Pole #37 was approximately 9 ft to right of the operator on the street. The bike was 89 ft east of the operator, heading down the lift.

From examining the holmet it's possible the operator hit pole #37 then rolled onto the street.